IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7595 OF 2005

Naresh Laxman Bhoir .. Applicant
versus
The Sate of of Maharashtra .. Respondent

Mr.P.M.Pradhan for applicant
Mr.K.V.Saste, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 1st December 2005.
P.C.

. Heard Mr.Pradhan, learned Counsel for applicant and Mr.Saste, A.P.P. for State.

2. Applicant is arrested pursuant to F.I.R. lodged at Kapurbawdi police station. It is registered as C.R.No.I-253 2005 for the offences punishable under section 302 read with Section 34 of I.P.C. and sections 2, 25(1)(c) and 27 of the Indian Arms Act

3. Deceased was travelling from Panvel

towards Thane on 25th August 2005 by his vehicle. He reached the place of incident which is at the junction of Dongripada Naka at about 8.15 a.m. and stopped to purchase a newspaper at the stall and upon returning to his car, two assailants on motor cycle with helmets on came near his car and shot him at point blank range. Deceased fell down and the assailants fled the scene of offence. The lady who is running newspaper stall lodged F.I.R. Pursuant to certain investigation two assailants have been arrested. Applicant has been arrested on the charge of alleged conspiracy on the footing that the deceased was known to him. Statement of one Manohar Patil and Ashok Patil set out the fact that the deceased along with them was carrying on cable business. Cable business which is spread over the residential colony, according to witnesses, was allegedly the business interest of the applicant herein. According to them, applicant had decided to settle some scores on account of cable business

rivalry with the deceased and, therefore, hired assailants to commit the offence.

4. Applicant applied for bail but the sessions court considering seriousness of the offence and the fact that the investigation was in progress rejected the application. Contention of Mr.Pradhan is that the applicant has been arrested on 3rd September 2005 and was remanded to police custody till 7th September 2005. Applicant, thereafter, is in magisterial custody.

5. It is contended by Mr.Pradhan that as far as present applicant is concerned, except the hotel owner who runs the hotel adjacent to the place of incident, none have stated that the applicant was present anywhere near the scene of offence. On the other hand, son of deceased has clearly stated that that the applicant as well as the deceased had cordial relations. He was known to the deceased as friend rather than any

business rival. Mr.Pradhan states that applicant is not running cable business. He is serving in a company. Applicant had absolutely no connection with the cable business nor with any gang allegedly involved in this incident. Mr.Pradhan submits that the applicant has no criminal antecedents. He has not been named as a conspirator as well. Barring stating that the applicant and deceased had some business relations and the applicant had once said that the deceased had crossed his path nothing else is disclosed by the persons whose statements are recorded till date.

6. After perusing the statements and the material collected till date, in my view, except two cable business owners who were in partnership with deceased none including son of the deceased have spoken about any business conducted by the applicant. The persons who were allegedly carrying on business with deceased are Manohar

and Ashok Patil as well as Janaki Naidu. Prima facie, Applicant is not involved with this business. Applicant has not in any manner, according to witnesses, except for saying that cable connection for a particular building should not be given to the deceased and if the deceased manages to get it, he would settle scores with him, had any involvement in or connection with the crime. That the applicant had any connection with cable business is not their case. No details of the cable business in which the applicant is allegedly engaged are set out. Prima facie, therefore, the motive also is not clear. The applicant's connection with the crime is, prima facie, not established. Witnesses viz, hotel owner has only seen the applicant allegedly prior to the incident having a cup of tea at his hotel. Statement of the hotel owner and waiters are also perused by me.

7. It is not a case where applicant had

actually participated in the assault or attack. The trial court has also accepted this aspect but yet, refused relief on the ground that the investigations were in progress.

8. Considering these facts and that the applicant has no criminal antecedents and that he is a permanent resident of Thane and willing to abide by all conditions, this is a fit case where he should be enlarged on bail with stringent conditions. Accordingly following order:-

i) The applicant shall be enlarged on bail in connection with C.R.No.I-253 of 2005 registered with Kapurbawdi Police station in the sum of Rs.15,000/- with one or two sureties in the like amount.

ii) Applicant who is presently under treatment is directed to report to the Kapurbawdi Police station once a

fortnight between 5.00 p.m. and 7.00 p.m. till the conclusion of trial.

iii) Applicant shall not directly, or indirectly make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iv) Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any findings or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)